IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

Khayali Lal v. Mangilal

S.B.CIVIL REGULAR FIRST APPEAL NO.9/1986 against the judgment and decree dated 6.11.1985 passed by Additional District Judge, Rajsamand in Civil Original Suit No.13/84, Khayali Lal v. Mangilal.

Date of Judgment : 28th January, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Manish Sisodia, for the appellant.
Mr. Rameshwar Chouhan, for the respondent.

BY THE COURT :

By this regular first appeal the plaintiff appellant has given challenge to the judgment and decree dated 6.11.1985 passed by Additional District Judge, Rajsamand in Civil Original Suit No.13/84 titled as Khayali Lal v. Mangilal.

The plaintiff appellant preferred a suit for recovery of Rs.13,780/- alleging inter-alia that defendant Mangilal had taken a loan of Rs.13,000/- from the plaintiff to purchase a tractor. The loan was taken on 13.4.1987. According to plaintiff the defendant agreed to pay interest @ 2% per month. The plaintiff and defendant also executed an agreement in this regard. The plaintiff also alleged that the said principle amount was not paid to him and in addition to that the interest from 13.1.1984 to 13.4.1984 amounting to the tune of Rs.780/- was also not paid. A decree, therefore,

for the amount of Rs.13,780/- with future interest was claimed by the plaintiff.

A written statement was filed on behalf of the defendant admitting the fact that a sum of Rs.13,000/- was taken by him from the plaintiff but the same was not taken for the purpose of purchasing a tractor but was taken for construction of house. It was also stated in the written statement that the suit deserves to be rejected as no account was sent by the plaintiff to the defendant as required under Sections 22 and 23 of the Money Lenders Act, 1963.

On basis of pleadings the trial court framed six issues as follows:-

> "{1} क्या प्रतिवादी 13000/- रूपये की रकम मकान बनवाने को प्राप्त की न कि ट्रेक्टर खरीदने और ब्याज की रकम रूपये एक प्रतिशत प्रतिमाह का तै किया था ? {प्रतिवादी}
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> {2} क्या प्रतिवादी ने इस रकम के पेटे रू. 12718/- की अदायगी कर दी और इस तरह के केवल 283/- रूपये व ब्याज देने बकाया है? {प्रतिवादी}
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> {3} क्या वादी ने प्रतिवादी को यह रकम मनीलेन्डर्स की तरह दी थी वह मनीलेन्डर होने के कारण उसने नियमानुसार हिसाब नहीं दिया जिसका दावे पर क्या असर है ? {प्रतिवादी}
>
> {4} क्या प्रतिवादी 100/-रूपये माहवार से किश्तों का अधिकारी है? {प्रतिवादी}
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> {5} क्या वाद पत्र मयाद के बाहर है, जिसका मयाद के बाहर नहीं होने का उचित आधार न होने पर क्या वादी इसको प्रमाणित करने का विशेष अधिकारी है ? {प्रतिवादी}
>
> {6} दादरसी ?"

All the issues except issue with regard to relief were to be proved by the defendant. The trial court decided the issue No.1 in favour of plaintiff and against defendant by holding that a sum of Rs.13,000/- was borrowed by the defendant

from plaintiff to purchase a tractor. The trial court also held that the defendant also agreed for paying interest @ 2% per month. The trial court while deciding issue No.2 held that the amount paid by the defendant was towards the interest and nothing against principle was paid by the defendant.

The trial court did not choose to decide the issues No.4 and 5 in view of the fact that while deciding issue No.3 the court held that the defendant was not a “trader” as defined under sub section (16) of Section 2 of the Money Landers Act, 1963 (hereinafter referred to as “the Act of 1963”). The court below, therefore, dismissed the suit for non-compliance of the provisions of Sections 22 and 23 of the Act of 1963. The plaintiff appellant has given challenge to the judgment impugned mainly with regard to the finding given on issue No.3.

The contention of the counsel for the appellant is that ample evidence is available on record to prove that the defendant was a “trader” and, therefore, the provisions of the Act of 1963 do not have any application in the present controversy.

I have heard counsel for the parties.

As stated above, the court below held that defendant Mangilal does not come within the purview of the term “trader” as defined under sub section (16) of Section 2 of the Act of 1963,

therefore, the amount borrowed by him in the tune of Rs.13,000/- is not a loan as defined under clause (g) of sub section (9) of Section 2 of the Act of 1963. The trial court while reaching at the conclusion that the defendant was not a “trader” invoked the explanation given below the definition of the “trader” prescribed under sub section (16) of Section 2 of the Act of 1963 which reads as under:-

> “Explanation.-For the purpose of clause (16) an “artisan” means a person who does not employ more than ten workers in a manufacturing process on any one day of the twelve months immediately preceding.”

The trial court held that though the defendant was running an oil expillar and also a flour mill but there was no evidence available to show that he employed more than 10 workers in a manufacturing process on any one day of 12 months immediately preceding, therefore, the defendant was an “artisan” and not a “trader”. The defendant also not being a “trader” the amount borrowed by him from the plaintiff was treated as loan as defined under sub section (9) of Section 2 of the Act of 1963. The court below, therefore, dismissed the suit in light of clause (b) of Section 26 of the Act of 1963 for non-compliance of Sections 22 and 23 of the Act of 1963.

I, without entering into the controversy as to whether the defendant could be held “artisan” or not, consider it appropriate to decide this appeal on the count that the court below failed to appreciate the evidence available on record with

regard to running a hotel whereon defendant was engaged in buying and selling of edible goods.Ample evidence is available on record to show that small hotel,(as called in a common parlance in rural areas for tea stalls),was run by the defendant whereon he was selling tea and other food stuff.

The defendant witnesses viz. Chatarlal s/o Dhannaji, Chatarlal s/o Bhuraji and Udailal s/o Bherulal in quite unambiguous terms stated that beside the flour mill and oil expillar the defendant was also having a tea stall. The trial court totally ignored the evidence available on record in this regard. A person having a tea stall wherefrom he is involved in selling tea is certainly a “trader” being a retail merchant. There is no reason for not treating the defendant a retail merchant. The term “retail merchant” is not defined under the Act of 1963. However, according to its dictionary meaning as given in Black's Law Dictionary, a “retailer” means a person engaged in making sales to ultimate consumers. One who sells personal or household goods for use or consumption. According to dictionary meaning as given in Webster's Third New International Dictionary, a “retailer” means, one that retails something; a merchant middleman who sells goods mainly to ultimate consumers.

On the basis of evidence available on record the defendant was selling tea to consumers from the tea stall situated near to bus stand Rajnagar and, therefore, he was certainly a retail merchant. As such I am having no doubt in treating

the defendant a “trader” as defined under the Act of 1963. The court below erred while not treating the defendant a “trader” as defined under Section 2 (16) of the Act of 1963.

In view of whatever stated above the judgment impugned dated 6.11.1985 passed by Additional District Judge, Rajsamand in Civil Original Suit No.13/84 deserves to be quashed and the same is hereby quashed. The court below decided the entire matter by applying the provisions of Money Lenders Act, 1963 and, therefore, no finding was given with regard to issues No.4 and 5. Looking to the fact that the error committed by the trial court effects the merit of the case, I consider it appropriate to remand the suit to trial court to hear and decide the same afresh by treating the defendant a “trader” as defined under the Act of 1963. The parties, therefore, are directed to appear before the court below on 4.4.2005. The record of the trial court be sent forthwith.

The appeal stands disposed of accordingly.

(GOVIND MATHUR),J.

kkm/ps.